NO. 85-727

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THE MISSOURI FARMERS ASSOCIATION, INC.,
Petitioner

v.

THE UNITED STATES OF AMERICA

BRIEF OF AMICUS CURIAE NATIONAL COUNCIL OF FARMER COOPERATIVES IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

REGULATIONS

OTHER AUTHORITIES

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INTEREST OF THE NATIONAL COUNCIL OF FARMER COOPERATIVES

The National Council of Farmer Cooperatives, hereinafter referred to as the National Council, is a nationwide association of cooperative businesses which are owned and controlled by farmers. Its membership includes 101 major marketing and farm supply cooperatives, the 37 banks of

the Farm Credit System, and 33 state councils of farmer cooperatives. National Council members handle practically every type of agricultural commodity produced in the United States, market these commodities domestically and around the world, and furnish production supplies and credit to their farmer members and patrons.

Five out of six United States farmers are affiliated with one or more cooperatives. The National Council represents about ninety percent of the nearly 5,800 local farmer cooperatives in the nation, with a combined membership of nearly two million farmers.

The interest of the National Council in this matter is confined and limited essentially to those portions of the Eighth Circuit's opinion which appear to call into question the decision of this Court in United States v. Kimbell Foods, Inc., 440 U.S. 715 (1979) which holds that

nondiscriminatory state law would be adopted as federal law governing commercial transactions of federal lending agencies in the absence of a congressional directive to the contrary. Any deviation from this Court's holding in Kimbell Foods will disrupt the predictability of daily commercial transactions involving farm commerce and credit throughout the nation.

SUMMARY OF ARGUMENT

The Eighth Circuit's refusal to apply the Uniform Commercial Code as incorporated federal law governing Farmers Home Administration security interests conflicts with this Court's unanimous decision in United States v. Kimbell Foods, Inc., 440 U.S. 715 (1979), and resurrects and perpetuates the conflict among the circuits which Kimbell Foods sought to resolve.

ARGUMENT

I. Circuit Court Order Disrupting Credit Markets.

This Court, in its unanimous decision in United States v. Kimbell Foods, Inc., 440 U.S. 715 (1979), resolved conflicts among the circuits by holding that nondiscriminatory state law would be adopted as federal law governing commercial transactions of the FmHA and other federal lending agencies in the absence of a congressional directive to the contrary. The Kimbell Foods decision brought a much needed measure of uniformity to commercial transactions involving the commerce of farm products and the issuance of farm credit. The decision subjected the FmHA to the same market forces and commercial laws governing private lenders.

As a result of the Kimbell Foods decision, farmer cooperatives and private farm lending institutions could plan daily commercial transactions on the basis of Uniform Commercial Code principles without fear that the uniform standards would be inoperative every time a federal lending agency became a part of a commercial transaction. As a result, money could be loaned to farmers with the knowledge that priority disputes regarding collateral would be resolved by Uniform Commercial Code principals. Moreover, farm products could be purchased by cooperatives from farmers with the knowledge that authorized sales would also be governed by the principles of the Uniform Commercial Code.

As a nationally recognized commentator on this subject observed:

> [As a result of the unanimous Kimbell Foods decision] the FmHA and other federal lending agencies are clearly governed by the same rules which control the rights and duties of private secured parties.... [F]ederal agencies will be measured by the same standards as commercial banks, credit unions, finance companies and credit sellers. This means uniformity, which is the hallmark of the UCC.

Clark, The Law of Secured Transactions Under The Uniform Commercial Code, Section 1.8[1][g] (1980).

The predictability and uniformity created by the Kimbell Foods decision has been destroyed by the recent per curiam decisions of the Eighth Circuit which applied the self-serving FmHA administrative regulations as the commercial law governing commercial transactions of the FmHA. The Eighth Circuit's decision has completely disrupted the predictability of daily commercial

transactions involving farm commerce and credit throughout the midwest and nationwide. No longer can private farm lending institutions or farm product purchasers plan their commercial transactions on the basis of Uniform Commercial Code principles.

The Eighth Circuit's application of a regulation which states that the FmHA can take no action "to its financial detriment", see, 7 C.F.R. Section 1962.17 (1985), grants the FmHA a "special status" it was denied by this Court in the Kimbell Foods decision. 440 U.S. at 737. As a result, lending priorities which private farm lending agencies expected when making loans to farmers are rendered meaningless if the FmHA is given priority regardless of its commercial conduct.

Similarly, millions of dollars of farm product purchases are clearly in jeopardy in light of the Eighth Circuit's decision. Grain purchased from FmHA debtors by farmer cooperatives throughout the nation may now be subject to FmHA liens. Prior to the per curiam decision of the Eighth Circuit, farmer cooperatives, in purchasing farm products FmHA debtors were permitted to sell, could expect that the farm products were free and clear of FmHA liens as provided by Uniform Commercial Code Section 9-306(3). Now, however, in light of the per curiam order, the FmHA can ex post facto deny "release" of liens on farm products, make a claim for those products, and place in dispute the right to many millions of dollars of grain. In fact, the FmHA is using the recent decision of the Eighth Circuit to claim a security interest in grain in which, prior to that decision,

it knew it had no legal interest.

The FmHA should not be permitted to simply promulgate a self-serving regulation to overcome commercial code principles it dislikes. Because the Eighth Circuit has ignored this Court's ruling in Kimbell Foods, the FmHA is now permitted to conduct business under different commercial standards. Farmer cooperatives, consequently, are forced to conduct business under two sets of commercial rules, one for private parties and another for federal agencies. The farm community is without guidance in its daily commercial transactions because the uniformity, equality and predictability of commercial law created by the Kimbell Foods decision has been destroyed.

As Congress and this Court have observed, the Uniform Commercial Code is, in essence, "neutral" because it was not

drafted, unlike the FmHA regulations, by a party to the commercial transaction. To allow the Circuit Court's per curiam decision to be left intact will not only be unprecedented and contrary to the decision of this Court but will result in a distinct disservice to states which have gone so far in achieving the desirable goal of uniform laws governing commercial transactions. Kimbell Foods, 440 U.S. at 732, n. 28. MFA's petition for a writ of certiorari should be granted and this Court should reaffirm its prior holding in Kimbell Foods which refused to grant a special status to federal lending programs.

CONCLUSION

The Kimbell Foods decision requires the application of the Uniform Commercial Code to the commercial transactions of the FmHA unless Congress directs otherwise. Congress has not acted to change the

Kimbell Foods holding. In fact, Congress intended the FmHA to be subject to the same market forces as private parties. The Eighth Circuit's decision has created chaos in farm commerce and credit. Thus, the National Council respectfully asks this Court to grant MFA's petition and to reverse the Eighth Circuit's misdirected decision.

Respectfully submitted,

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